Chaffee held a perfectly clear and decided title to the extended term, and holds it to the present moment, or the movement of the evidence to day? And here I do not undertake to contradistinguish between Day and Chaffee. It is admitted on the other side, that they stood precisely in the same position after Day had brought this bill as Chaffee's assignee. Then we start with the fact that the legal title was in us on the 31st of August, unless divested by these papers, and that brings us to the examination of the legal title.

Then we start in this discussion with the admission in the bill and from the facts in the case that Goodyear and his licensees held, rightfully or wrongfully, the original patent for its entire term for their own benefit, and that on its expiration among these licensees were these defendants. That is the first fact, and it is a fact claimed by us, claimed by the defendants and acknowledged on all hands; coupled with that and proper to be considered with it, and in the course of the argument to be considered with it, is the allegation in the bill that, though these defendants were Goodyear's licensees and held this patent up to the extended term, after its extension it inured to Chaffee in his own right, and they have neither license nor contract under it. That allegation also stands in the bill. We admit first, that the original term was for the benefit of and held and enjoyed by Goodyear and his licensees; second, that these defendants were among these licensees; third, that these defendants, or Goodyear licensees, never had any license or right to use the extended term. Those allegations are in the bill and sworn to by affidavits, not upon belief or information, but as facts by one who should know, (Chaffee,) so far as there is any fact unconnected with legal construction that governs this case, that he has an improvement; and on an application, if preliminary injunctions are granted upon *ex parte* affidavits, they are granted upon affidavits made and attached to the bill originally, as it is sworn to. They do not propose to convince the conscience of the Chancellor in a final hearing, but upon a question of preliminary injunction they do convince the conscience of the Chancellor and your honor will grant it, every thing else being equal, upon an affidavit attached to a bill, a preliminary injunction, if a proper case is made by it.

Then the defendants say they have a license, and they have put in here two indictments, and they must make out of them one of two things: either that they admit, recite and prove by an independent substantial contract, that the Goodyear licensees held licenses, or that they in themselves constituted the independent substantial contract. Upon that point let me see if I am right. They put into this case, admitting our case, our patent, our title, our right, our complete claim, two contracts in writing. They say that these contracts furnish a defense—that they furnish either a license itself on the face of the papers, or sufficient evidence that one has been made aside and independent of them. I admit that the gentleman on the other side did not put it to your honor with that distinctness and did not state his proposition clearly to be that. It was not for want of ability in himself (whom, by the way, I have never had the honor to meet before and whom I am happy to meet now.) It was not for want of clearness of intellect and acuteness of logic that he did not do it; it was because he saw it perfectly, clearly, himself, but was afraid to place it before your honor, in a distinct view, lest your honor should discover the true right of the case from his own argument. He did not say distinctly: "We place the title here before the Court, on which we "stand or fall and that title must either furnish evidence "to the Court that another contract was made independent "of it which sustains us or the contract itself which is be"fore the Court must in and of itself sustain us or we cannot "stand at all." That was not his ground nor his mode of addressing the Court on the point; but this is precisely his position, and he cannot by any possible logic or ingenuity avoid it. He comes here with these two papers. He admits that he has nothing in our bill except the fact that they were licensees of Goodyear. He then says these papers aid him in his defense. How? I answer, by their being a substantive contract, and of themselves binding upon these parties; or they recite such a contract conclusively and clearly in existence, which is not produced, as entitles parties to a defense. That is the point, and precisely the point we claim to your case; it is precisely our ground upon it. If we cannot stand upon it, we cannot stand at all, and the gentlemen cannot stand without it. And I propose to look at the papers in these two views: First, to see distinctly whether, taken alone or together—or in other words, taken in law and in the law of equity which the gentleman talks about, not in the law of arbitration. (I sometimes thought he considered himself as addressing a popular assembly when talking about equity)—whether they amount to an agreement or a recital of a contract sufficient for your Honor to act upon it in a Court of equity; or second, whether they contain such a contract upon their face.

When I originally made my notes with a view of arguing this case, I thought I was giving the gentleman a great concession. When I came to make my notes on this point of the case—for these are not the notes prepared upon the gentleman's argument—I proposed to go on my own view of the case, and I thought I was giving a wonderful concession when I was going to start with arguing that both these papers should be construed as one paper—that both these contracts with Judson should be construed as one whole contract. I supposed that was precisely what the gentlemen would claim on the other side, and I supposed it was precisely what was not the law of this case. But permit me to say that I was greatly surprised yesterday when I heard the gentleman undertake, in a very summary manner, to kick out of the back door of this case his own contract, and say that the last one had no binding force because the parties had no authority to make it.

Mr Ames—I did not say that.

Mr. Richardson—I understand the gentleman to put the case to the Court in that view precisely.

Mr. Ames—I said that that clause in the second paper which imposed a new condition upon the licensees, Judson had no power to make.

The Court—You argued that by the second contract they had no right to alter the right which Goodyear and his assignees had by virtue of the first, without first getting their consent.

Mr. Richardson—That is precisely the point I propose to put to the Court, and I think when I have stated it the gentleman will not complain of me for not understanding him.

Mr. Ames—I did not say that the second paper had no binding force.

Mr. Richardson—In regard to other matters it is not material. The gentleman says that part of the second contract is good for nothing. Now I propose to examine these contracts together. I thought it a great concession, as I have already said, to do so, and I think it so now. I think upon the law of this case—the equity law of it—that the last contract is the only legally binding contract in existence for any purpose, and I propose to show before I get through this case, that it is true in law that the last contract is the only one that they can be aided by, or that they can stand upon, or that they must stand upon; that the first is entirely abrogated by the second, that the terms of the last cancel the first, and that the last becomes the only contract between Chaffee and Judson, and I propose to show your honor that they had a right to make such a cancellation and new contract. But, for the purposes of this point, originally I propose to put it upon the strongest ground the gentleman can claim—that the two contracts should be taken together. Or, if the gentleman wishes it, I am willing to argue it with the clause stricken out, which he says they had no right to put in, and then the case is with us. Take the two contracts together, or, if the gentleman prefers it, take them with the clause stricken out in the last one, which he defines now as offensive, and which he says they had no right to make; still the case is with us upon these two contracts; there is no license and no evidence of license.

In the first place, aside from the contract, we have a right, the gentleman says to look into the surrounding circumstances, to see how the parties were situated. And we have a right to look into the facts to see whether there was such a contract, if they depend upon the reciting part of it, and whether that contract was executory or whether it was executee. And there is one great fact—if they waive the point of the contracts themselves amounting to licenses, and stand upon the recital of the fact of another subsequent contract made with Goodyear and his licensees—there is one great fact in this case that stands out above all the rest, that should be weighed and considered with the papers themselves and with the defendants in this case. It is a fact, like other facts, not exactly derived from any affidavit but from the whole of our case. (And now I am upon my first point, that they must depend upon a recital of a substantiative contract made between Goodyear and Chaffee, and Goodyear's licensers—that is, that these papers are not a contract in and of themselves, but that they are sufficient evidence to this court that such a contract was made.) I say there is one fact upon that point that stands out so distinctly and so perfectly conclusive that it seems to me the gentlemen were acting the part of absolute insanity, if this utter ruin was to visit upon their clients, that they did not show your Honor how the fact was, if the fact when shown would not have placed them in a worse condition than they are at present; if not, it was due discretion on their part that they kept it out. There was no complaint here about ruling, and no pretense that it was not any rebuttal, in relation to this fact. It goes clear with their whole case; and worse—it goes to the very root and marrow of the case. Without it they tremble if they do not fall; if the fact is as they claim it, we fall at once. What is it? They say this paper recites what is conclusive, undeniable evidence of a license, of an agreement, of a sale, of anything they choose to call it for the purposes of this argument. If they have such a paper containing a license, where is it? That is the fact I propose to present to the Court. If they have such a paper why not put it into this case? They put before your Honor the two other contracts with Judson, and they say that these recite a third, which was made by the parties themselves, which is not dependent upon equitable constructions of the principle or doctrine of *cestui que trust*, but which is dependent upon contracts between the parties themselves. They say "You did make by the recitals in these papers a contract between us and the licenses of Goodyear," but they do not say whether it was made by parole or writing. Where is the contract or where is the proof of it? Who knows about it? Do we know it—we the parties for whose benefit it was made? Does it belong to Chaffee? Can Chaffee produce it? No, Sir; it is a contract in their own pockets if anywhere; held by their own licensees if it exists at all—a contract which, if put into this case, would determine this entire discussion. Who should produce it? They should. We cannot do it; it is not in our possession. They stand up for two long hours and say this paper recites a contract which was made. They say it was made by the parties in interest here, and yet they withhold that contract. If they have such a contract in writing, it is in their breeches pocket, and they mean to let your Honor guess what it contains. It is not only a significant fact in the case—it is not only a significant fact in relation to the construction of this instrument, but in relation to the character of this defense it goes to the very soul of it when parties come into Court and say, "we have got a careless recital at "the head of some paper made between the plaintiff and "a third party in relation to a contract, which we have got "in our pocket, but which we withhold, and stand at the "bar of the Court and argue what it may be;" when by the rules of law and evidence of law they should produce that contract. How will your Honor look at it? In the exercise of sound discretion as Chancellor, will you not say to Hartshorn, "If you have a contract with Chaffee "which he sold to Goodyear's licensees this extended term "produce it; bring it before the Court and let us give it "construction, and not ask us to guess upon the mere re"cital of a paper what it is!" It seems to me like playing the trickster in a Court of Justice, and I was surprised to hear the gentleman talking about equity and sound discretion and at the same time holding the very important contract in his pocket, claiming before the Court that it was this, that or the other thing, when it is a paper made in their behalf, for their benefit and to give them the very right under which they set up a claim here.

Now, sir, have I not a very important fact to start with, and does it not grow out of the very nature of this case—as they put it themselves? And mark me, I do not argue upon any case I make here, neither upon any begged question, nor any state of facts which we put before the Court. They come here with two contracts, which they say recite a third, made for their own benefit with them. Why don't they produce it? Where is it? If it was here, would it appear that on the 31st of August, 1850, it was cancelled forever? If they put it into this case, would it not be true that the testimony would have been on the face of it, and would there not have come with it the fact that on that day it was abrogated by the parties, and that Goodyear and his licensees agreed to give it up, and it was carried out? And then were they any better off to run their gauntlet with the Court and see if they could not squeak through the Court upon a recital of a contract which did not exist, than to put the papers containing the contract before the Court? There is the bottom of that story in relation to these affidavits being in their pockets. There is the trouble in relation to our subsequent affidavits. That is why they did not want them all to come in. But whether it is or not—because that is a mere suggestion from me—any evidence in the case, it is evidence that if such a contract exists it was made for their benefit. I would respectfully suggest to the Court to ask them why they do not produce that contract, and to be suspicious of it because they do not. They have made this case on their own ground. They put in two papers made with Judson, containing two contracts made with Judson, and they entirely omit the only one that would be of any benefit to them, if it ever existed.

I have one word in reply to that. *It never did exist.* There is a recital of it to be sure; a contract was even made, but on the very day this patent was extended, that contract, whatever it was, with Goodyear was abandoned. Your Honor knows something of the practice of the Patent Office—that though an extension appears dated the 31st of August and the Commissioner when he made his entry dated it on the 31st of August, yet it may have been pronounced and made known to the public a week afterward. Now when that announcement was made, this contract with Goodyear, whatever it was, was abandoned. What was it? I think your Honor will believe us when we tell you it was an executory contract—an agreement that if Goodyear would do certain things on his part,—pay certain sums of money, and do certain acts then and thereafter,—he, (Chaffee) would, when the patent was extended, convey it absolutely to Goodyear and his licensees. That is what we say the contract was, but they did not fulfil their part of the agreement. Goodyear and his licensees *never* complied with the terms of that contract, and so it was not carried out, and of course the extended term was never conveyed to these parties, and they cannot produce any evidence that it was.

Now, Sir, allow me to begin the construction of this contract with that one fact, that they depend upon the recital of a contract, that it is for their benefit, and they do not produce it. What do these papers prove under the circumstances with or without this other contract? Not now, what do they convey—that is not my purpose, but what do they prove? And for that purpose in the first place it is only necessary to say to this Court, with its long experience and great learning, that to find the construction of a contract for any purpose—either its recital or its conveyance—you must look it entirely through; you must examine it all. It will not do if you are going to ask what a contract recites—whether to estop or to bind the parties, or as evidence of the evidence of the existence of the fact—to look at one clause of a paper and say that it recites that, and omit the rest. It will not do to look at the reciting clause and omit the rest, for the rest qualifies it. But it is a well known principle to your Honor as a general principle of equity law, that you must look at the entire paper to see precisely what Chaffee meant to recite and precisely what he meant to admit. It will not do for a gentleman to single out this or that clause to say from the 8th to the 12th line it means this, but we have a right to take the whole paper, and your Honor is bound to consider the whole to see what it recites, and what it admits. And the gentlemen in their sane moments, when not heated by argument, will not deny it. It is not necessary for me to cite authorities to a man who has grown grey upon the bench, and with the dignities of the Court, to show that a contract must be taken altogether to find out what it means, and to show that if a party claims that it recites a fact, it must recite it entire, and what it recites is the thing itself, and no more. Thereupon, the point of whether we must take the two papers together, I say we must, unless we admit the first one. And mark me here, I do not conclude myself upon the point that the first was entirely annulled by the second. I conclude that the first stands, but I say that the last must stand with the first. Why? Because it was made between parties who had a right to make it. It purports to be either an addition to, or a substitute for the first, and the only question the gentleman can raise in relation to it is the question of trusteeship, or *cestui que trust*. And there I came to the point of answering the argument, "that Judson did stand as trustee, holding the contract for the benefit "of third parties, and standing in the relation of *cestui que* "*trust*; that he could not alter it or make any clause which "would take away or alter their rights." Now, mark you, I am arguing upon the gentleman's own ground, because I would like to see if we are not entitled to this injunction upon his own ground, so far as he states his fact correctly, and taking his law as he lays it down before the Court.

The gentleman says this contract cannot be taken together—the last cannot be taken with the first. Now I take that portion of it which he points out. There shall be no discrepancy between him and me. That part cannot be taken with the other, he says, because Judson had no authority to make it. That goes to his whole case—to settle his entire point here. Thus he begs his whole case and makes a most elaborate and beautiful argument upon it. He steps up with the utmost modesty at the side door and begs a complete entrance into our case—takes the whole of it by storm by begging the question, and then makes a most unnecessary and beautifully illogical argument upon it. That is, he assumes that Mr. Judson was a trustee for the benefit of certain *cestui que trusts*—that these *cestui que trusts* were these licensees of Goodyear, and that they held that patent under a contract from Chaffee for their benefit, and therefore this first contract could not be abrogated by it. If he is allowed to beg that entire question he begs his whole case. He says he assumes it rightfully. If he has got that, it is another part of this case—he has got his entire case, and that is bringing in aid of construction of recital of these instruments his only argument upon the contracts themselves to show that they make the allegation which he claims. No lawyer, however ingenious, can undertake to draw any other account from these contracts to aid the defendants as conveyances on their face, except that they convey to Judson as trustee to be held for the benefit of their licensees as *cestui que trusts*, and that he is holding them for these licensees as trustee. That is the only argument; if they get that they get their case. Then why did the gentleman go around to the back door and attempt to bring that in, in aid of his construction, for the purpose of showing that this recital was just what he wanted when, if it was so, it makes a contract on the face of it? Now, without reading one word of that contract, I propose to say if they are parties to it it does, and if they are not parties to it, it does not. That question the gentleman, with his ability, did not see fit to argue. The very knob and point of his case was left untouched, because he could not touch it. It was too hot—he could not touch it with his fingers. He did not dare approach that part of it—that they were parties to it, but begged the partnership and begged the trust, and having got that, he used it to annul his second contract, instead of using it to set up both contracts, and make a case under a trust which nobody could set aside. I had much rather met the gentleman upon the point itself. I would like to have heard him upon it, and had him point out wherein and how these trustees ever became such. I would like to have heard him cite to your Honor the trustees not named in the instrument, and to have looked into the laws in relation to trustees not named in instruments. Then he would come to have his case at bar.

Then I propose to argue the point of construction of instruments as mean conveyances on their faces. Taking the two together, or either of them separately, I propose to see whether there is such a trust conveyed for the benefit of these parties, and whether these parties have ever accepted it because I have not to cite authorities to your Honor to show that though my brother here creates a trust to me for conveyance to your Honor, that is enough, unless I accept the terms and qualified conditions of the trust myself. If I am a party to the paper or contract then it is perfectly clear that I do accept its conditions. I have my rights under it, and can claim them, and all parties must abide by the equity of the rule of trust. But if I am not a party to its inception, and never became a party afterward by my own consent or act, it stands as a naked trust not for any benefit, and it is without a *cestui que trust*—an attempt to create a trust for the benefit of a party who never comes in and accepts it.

And here for the purposes of the construction of this instrument, that I am right it is enough for me to say that this contract was alone with Judson. They attempt to draw out of it a construction that it was a contract made with him for the benefit of third parties. If so, it is enough for me to say now, as I propose to argue this point, that these other parties never acquiesced nor accepted the trust provided for them. They never came in and adopted it, and while it existed they never took any part in relation to it. Therefore they cannot now for the first time set it up in a court of equity to protect themselves. They slept on it for three years, and after sleeping so long—so detrimentally to the rights of Chaffee—it is not for them to turn around and say: "We seize upon that trust, which may have existed for our "benefit, and take the advantage of it."

Then all I have to say in relation to the gentleman's argument is, they were not parties to that paper—to that contract, and they had nothing to do with it. It was a contract with Judson alone, and being such, the most the gentleman can claim is, that the two papers shall be construed and taken together. If the *cestui que trusts* in 1851 had no rights under that trust they have none now—that is, if there was any trust created at all that they might have taken hold of, which I do not concede. The argument of the gentleman is that the first contract created a trust, and that Goodyear and his licensees were *cestui que trusts* from 1850 to 1851. Where is the testimony in this case that they have taken it? Where is the evidence?—for if they come under the trust they must show that they have become parties to it. That is law for the gentleman; it is common sense—it is arbitration law, if the gentleman wants that; it is the law of public tribunals; it is the law of morality, of common justice and of right; that is, I make with A or B a contract for the benefit of a third party, with the condition that the third party is to do certain things whereby he is to be benefitted, in order that this third party may come in and receive the benefits he must accept the terms of the trust in the instrument. If he is not a party he must make himself a party in order to have the benefit to be derived from the contract. There is no evidence in this case that these third parties ever accepted the terms of the trust. They set up this contract, and if they have papers to show that they have accepted the terms of the trust they would be aided in their case; but they can produce no evidence of it whatever.

But enough upon this part of the case. We have these two contracts together, and upon their construction I propose to look and see what is the recital in them. I say there is no recital of such a contract as would, if produced, affect this case. You will keep in mind, I hope, the point I made in relation to this matter in the outset—that if it does recite any contract it is wonderfully, passing strange they have not produced it to show what it is.

The first recital is:

"Whereas, I, Edwin M. Chaffee, have lately procured an extension of my patent—"

So far it is clear and distinct—there is no sort of doubt about it. It requires no legal logic nor nice trimming of reasoning to understand it. It is a plain, straight forward recital, founded upon a true transaction, as I showed in the commencement of my argument.

The next point is:

"And whereas said Goodyear agreed with me"—

They may have used the word agree just as the gentleman on the other side says they agreed, importing that the parties meet in their contract—precisely the same as though it was said "he contracted with me"

"—for himself and others using my said patent under him."—

That is—Goodyear's licensees, undoubtedly.

—"that they would but have the expense of completing my said extension of said patent."

That was the argument, no doubt. If he yet did not favor us with the production of the paper they have in their pocket, we would know it was the fact

—"if they would pay the expenses extended"

Was that a sale? No, sir. It recites a simple agreement executory in its character to be consummated afterward; if they would pay the expenses—if they would make allowances to him for it afterward they were to have the benefit of it. Take it head, shoulders and all, and give the gentlemen the benefit of that recital—take it in its length, breadth and thickness; we ask no favors upon it or upon its construction.

Then comes the recital of the amount to be paid to Chaffee, and how the payments were to be made. That recites simply a contract—an agreement. And here I might ask your Honor to believe they recited language in the papers which was not true. But such is not to be supposed. They may have made a mistake in giving an exact recognition of the thing. But there is something more in this contract; let us have the whole thing, and give them the benefit of it. He argued with Goodyear, that if Goodyear would pay the expenses of the extension, and do certain other things, he should have the patent.

I might with great propriety stop here, and ask if Goodyear ever paid. If that was all there was to this paper, and the last clause was thrown out, which the gentleman wants to have thrown out, I might with propriety stop at that precise point, and ask if Goodyear ever consummated this contract by paying Chaffee. Did he ever do it by making another executory contract that he could do it, or did he never from that day pay these expenses, but leave them for Chaffee to pay? The gentleman could have shown how that was by the production of these papers, and then the facts would have been clear. All I say is, there is a clear recital in this paper that he had contracted with Goodyear, that if Goodyear would do certain things he should have the patent upon those conditions. Where in this paper is there any evidence that it was ever done? Now I want the rest of that paper to show—and there is where the gentleman must take our line of argument—that that paper on the face of it shows that the contract never was complied with. The paper is entirely consistent with itself. The paper is entirely consistent with itself. After you leave that clause, take every other clause in these two papers, from Alpha to Omega, and follow them down line by line, and they show that Goodyear never complied with his contract, and, therefore, they take this one made with Judson. That is precisely the point in the case which the gentleman dare not approach. It was perfectly evidenced by his false logic and reasoning, and begging of the question that he saw it. It was perfectly evident that he had his clear, logical mind upon it, and feared to approach it. But there it is, and thus the paper becomes law. The two papers stand together or they fall together. Upon their recitals now I speak, and the subsequent recitals in this contract do most conclusively show that Goodyear never did adopt it, and never did carry out that executory contract—that he never paid the expenses of the extension, never expected to pay them, and that they were left upon Chaffee himself to pay. That is why we find him contracting with Judson. Why was Judson in it if that contract was not carried out? What in the name of common sense are you bringing in this lawyer to make him trustee or overseer of a trust for the purpose of giving Judson a position, when if the contract which was originally made between Goodyear and Chaffee had been carried out, the right of these Goodyear licenses would have been established? I have no doubt Goodyear went to Chaffee, who was poor, friendless and homeless, with no means whatever to procure this extension, and said "We will pay these expenses for you and a certain sum besides and you shall "have the use of the patent for yourself, if you will assign "the patent to us." Such no doubt was the contract. It was a miserable contract for Chaffee—a great sacrifice for him to make. If that contract had been carried out by Goodyear, Goodyear might have made a hundred thousand dollars. If it had been carried out Chaffee would have sacrificed what would have net him a hundred or two hundred thousand dollars. He had no means of procuring the extension, so he applied to Judson, and Judson went on and procured it. Now who advanced the expenses? I hope your Honor will take note of that point. Did Goodyear and his licensees advance these expenses or did they not? My position in relation to this matter might seem a little strange if your Honor did not consider who Goodyear is, and if your Honor did not consider—though it is not in evidence in this case—the general fact that this combination, this monopoly, has grown rich—not Charles Goodyear himself; that he stands side by side with Chaffee still a poor man, though an inventor, and the money has all been made and pocketed by this combination. Who paid Chaffee? Did Goodyear? I venture to say if that contract could be produced, it would be found that it was a contract with Goodyear alone. Judson, when he came to recite it here, was careful to recite it as being made by Goodyear for the benefit of these parties, but I venture to say if they had unpocketed that contract it would have turned out to have been not for Goodyear's licensees but for Goodyear himself.

But no matter for that: it simply recites such a contract. I come now to the inquiry upon the face of the papers—did they pay the money? Follow these papers from the point to the end and you find it distinctly and unqualifiedly asserted that Wm. Judson paid this money. You will find there that Chaffee is undertaking to secure Wm. Judson for that identical money which Judson paid for Chaffee. The very next recital is that Judson paid that money for Chaffee, and that he shall be secured by these contracts for it.

Now I submit that you shall not assume that Judson was one of the licensers. They do not admit that in the bill. The gentlemen do not start with that. That he may have acted as attorney for these licenses in some things, I do not deny; but that he was one of the licencers is not true in fact, and is not admitted in this bill or claimed in the affidavits for the defense or in any other form. It is not admitted in the bill, nor proved in the affidavits, nor attempted to be proved, that Judson appeared and acted for these india rubber people, Goodyear's licensees, in getting this extension, or acted as their agents in making these contracts. It is for Judson, and Judson alone, that this contract is made, and he is not shown to be any way connected with those parties in this case except as attorney, and the attorney of Chaffee, too. Then I ask, from the recitals of these papers—and they have been recited so many times here that I will not repeat them—when it is said that Judson has paid that money and that he seeks security of Chaffee, is there any evidence that these parties ever did comply with the condition precedent upon their part to make them trustees, and bring them in under these contracts and under the benefits of its recitals? None at all, and that is conclusive evidence on the face of the papers that the contract with Goodyear was abandoned and one substituted with Judson.

I will read enough to show that I am right about that, so that the gentleman may not say that I jump at a conclusion. I will read the next clause after the one I previously read. It shows precisely what I say—that the contract with Goodyear and his licensees was abandoned, and one made with Judson:

"*And whereas* Wm Judson has had the management of said application for said extension, and has paid and become liable to pay the expenses thereof, I agree to guarantee him—"

Is not that a substitution of Judson for Goodyear?

—"The said sums of money, according to the times and terms above specified"

Then Goodyear did not pay the expenses, did he? No, but Judson did, on condition that the contract with Goodyear was put out of the case. I am arguing now simply for the purpose of showing that upon the recitals of this paper, it is not shown that this patent was originally conveyed to Goodyear and his licensees. I think I have shown it, because the very mode and consideration of the conveyance to Goodyear, the very terms of it were, that Goodyear should pay for the extension and certain annuities. The very recitals that accompany it are on the part of Judson and Chaffee himself and that Goodyear did not pay the expenses, but that Judson did, as Attorney of Chaffee and managing for him; therefore, whatever contract he makes, he makes with Judson and for Judson's benefit.

But I do not stop there. I turn over to the second contract, and read it coupled with this:

"*And Whereas*, In said agreement there was an omission to state that if said licensees continued to use the improvement in said patent named—"

Is that a recital of a sale to these licensees? No Sir; but it is a recital perfectly in accordance with one I have already named—that Judson paid his money.

"*Whereas*, It was not sufficiently agreed that if Goodyear and his licensees continued to use"—

They should do what? They should each contribute to pay—to whom? To Judson. Why to Judson? Because Judson had paid to Chaffee, and Chaffee had become in Judson's debt to the amount of that advancement.

"——— ——— pay to said Judson his proportion of the expenses

issued"

"*And Whereas*, There is no such direct absolute specification on the part of Judson to pay the $1,500—"

Now they are looking out for Chaffee

'—in quarterly payments,

And Whereas. It is now agreed that said argument should be so modified as to secure the objects more fully intended to be secured, it is agreed that said licensees shall each bear his share of the services and expenses—"

They had no right to agree that: that is only a recital; it is no argument binding upon anybody, because Judson could not set down for himself and Chaffee for himself, and agree away the rights of these rubber people.

—"it is agreed they shall each bear his share of the services and expenses of said Judson, and then each shall have a license of Judson to use said improvements."

That is the character of this contract; it is a contract to relieve Chaffee of the liabilities of these expenses and pay him an annuity on condition that they should be licensed. This paper which they put in is one on which they stand or fall, and the very terms of it are, "I will give you a li"cense on condition that you will pay for it."

And here allow me to suggest the difference between the argument of the gentleman on this point and mine. His argument was, that it was a license for which the parties should pay, and if they did not that we should enjoin them for not paying. That is not the recital of this contract so far as Goodyear and his licensees are concerned, because it is only a recital to them—in relation to them as they are not the parties, that they should have it. We are not bound to stop with these omissions that the licensees shall pay each his share of the expenses as the condition to use said improvements, but we find distinctly and unqualifiedly as a condition precedent—not a condition precedent to the use of the machinery, but a condition precedent to Judson's having any right to grant licenses at all to any of these persons, "that on the payment of his or their share or "proposition of the services &c."

They take the benefit of that whole recital, because it is all a recital, so far as Goodyear and his licensees are concerned. It is a contract; the power and authority are between Judson and Chaffee; and it constitutes Judson, I agree, a special irrevocable attorney to do certain things upon certain conditions. It is simply saying to Judson "you have spent money in my behalf, and I owe it to you; "if you will pay me an annual salary, so and so, and collect the money of these licensees, you may license them "upon condition of their refunding you that money and "paying you that amount; but not upon any other." It was as an irrevocable conditional power of attorney, so far as Judson and Chaffee were concerned. So far as Goodyear and his licensees were concerned, it was mere recitative, and recites what they may or may not have. It recites that Goodyear and his licensees may have the use of this patent, and may work under it by purchasing a license of Judson. Now, where is the proof that it has been performed? If they had a license under this patent let them produce it. I do not ask, then, to try the question of law whether, if Judson has a license under this patent, we can enjoin them as common infringers absolutely, or simply with the right to have this injunction dissolved by the payment of the license money; but I meet them short of that and say, not that you have not paid that license to Judson or Chaffee, but that Judson had no authority to give you a license from the recital of that instrument, and never has given you a license. They stop too short in their papers; they must go one step further and show that Judson has given a license; and then comes the question whether he has given it without the payment of the money. If Judson had under the contract given a license, even though he had given it without authority, it would have raised a different question from what is raised here. But if I am right in this first position in relation to this contract there is no evidence in this case from the papers themselves that Judson did give them any license. Has he in pursuance of that contract extended to Hartshorn a license? If not, why has he not? He was an attorney with full and complete power to do it, I acknowledge. He had all the authority necessary for the purpose of doing it, but has he done it? If so the defendants have their licenses in their pockets and might have produced them here. If so we should have been driven to amend our bill, and then the gentleman would have had a case which they have made so much talk about it, and we should have had a case to meet. But we were wiser than the gentleman charged us with being when we brought the bill. He did not have a bill setting forth an alleged license from license from Judson to Hartshorn because we did not know the facts. That is the reason why we did not allege it in the bill, and it is not in the proof here. Do you suppose that Mr Bradley, with all his keen perception as a lawyer, and long and careful and astute examination of this case, aided by the able and effective counsel of such men as Mr. Ames and Jas. T. Brady of New York, who is perfectly *au fait* with Judson in all these things; who knows Goodyear and Day, and Chaffee and the Chaffee patent from one end of the alphabet to the other, and has rung as many changes as can be played upon a fiddle, and understands every part of this combination and litigation from beginning to end? Do you suppose if such a license had ever been granted in this case that he would not have known it? Certainly. Your honor has been begged, as it were, on bended knees not to ruin their client or to do irreparable injury, when they had a license in their pockets, if any existed at all. No sir; my brother Ames instead of begging for money, if any such license existed, we have said, "Here is a license from Chaffee to my clients, given by his attorney Judson before the "power could be revoked. It is binding upon you—upon "this plaintiff, and if he seeks to set it aside by your honor's "decision in relation to this affidavit he must bring his bill "to set it aside." But no, they come alleging a license, and say "We will meet you with a bill." Then they may talk about learning and equity pleadings; until they produce their license it would be more modest to be quiet.

But we do not stop there. If they had a parole license—for they say a parole license might exist—where is that? William Judson is found over on that side of the table. He was the man for whom this case had to be continued the first time, in order that he might be present. He is a lawyer, and is prime manager here, and it was said that he must be here and must be consulted, and when we get him here he is aiding their counsel. Now if he has got Hartshorn's license by parole, let him show it, and let not the learned counsel talk to us about parole license, which must stay the Court in granting an injunction. They say a parole license is as good as a written one, let Judson swear to it—and as long as he has been tried in this India rubber controversy he would swear to almost anything under heaven. But he dare not swear that Hartshorn had a license; if he should, we could prove the contrary beyond the possibility of a doubt, and when I assert it, I assert only a fact which is probably necessary from their neglect to put in these licenses. If Hartshorn says he has got one on paper, where is the paper? If they have it, show it! If he has one by parole, Judson granted it to him. Judson is on the other side, and where is his affidavit of it? Hartshorn never so understood it. He was taught by a N. Y. lawyer, and never supposed (and that accounts for the charge in this defense) that he was the lucky man to have a license. He supposed that from 1850 he had been a common infringer, and that Chaffee and his partners, Bowen & Brown were under the control of this India rubber combination, and were so helpless that they could never moot this question in a proper form. He supposed he could go on without a license in violation of all right and law, and never thought of obtaining a license; and when the Providence counsel for Hartshorn began to make up this case, they made it up on the ground of want of novelty, and not on the ground of a license. But when Judson came, he said, "that will not "do; we have stood too long in the use of this invention, "and made too much out of it, to undertake to attack its "validity; we must cry license, and if you will allow me "to go into the counsel with brother Ames, I will put the "defense on the ground of a license granted by me to "you." And then, when they asked him, "Where is your "license for Hartshorn? did you give him one in writing?" he answers, "No, not in writing. Let us see; will not a "parole do in equity?" Then they ask, "Did you give a "parole license?" "Well," says Judson, "smoothing down his countenance, "with all my might I dare not, be"cause Hartshorn has been crying from Dan to Beersheba "that he has never had a license, and if I swear a parole, "they will bring a hundred affidavits to the contrary, and I "shall be caught in my own trap." Now, sir, I will not allow so much conscience to gentlemen as I might. I say he dare not swear that such a license existed, because he knew the proof was within our power that it never did exist.

Then allow me to say that we show you most conclusively that a license never was made by Judson or Chaffee to Hartshorn by these paper. Then they shall not ask us to amend our bill. We stand upon our case, they undertake to answer it by proof of license. They do not prove it; they omit two material things. They tell us of a contract between Goodyear and Chaffee, but if such a contract exists they pocket it. They tell us of a license to Hartshorn by Judson but do not show any proof of it. Can we go into the depths and show that Judson did not license Hartshorn? No. If they set up a license either by parole or writing, they must prove its existence in some form in court. The paper shows the contrary, the contract shows the contrary, an affidavit shows the contrary. And on this point we are entitled to our affidavits, the Court's rule only goes to the avoidance of that license. And that was right. We only go to the license and its very being and existence; and if you look into the affidavit of Chaffee that when he went to Judson for his pay, Judson replied, "The licensees "have never come in under this contract; they have "never paid a cent and never will. I have no contract "that I can enforce. They are common infringers." That is the amount of what Judson said in 1853. "The Good"year parties never have come in under this contract; they "never have paid anything, and never will. I wish I had "not paid so much as I did." Hartshorn never thought he had a license till he heard of it from Ames and Bradley. The honest counsel employed in this case that had not been schooled in the trickery of the party had never filed such a defense. They said "your patent is good for nothing, "and I will fight you." But the New York counsel came and the matter was turned over to him, and he turned the whole defense upside down, and says "we come with a license" which is not produced. They thus undertake to create a chimera in your Honor's mind, by begging the case as much as possible without making anything clear and distinct about it. And this, too, is suggested in the face of our affidavits, though I have sufficiently stated it to your Honor that there was no license whatever.

Mr. Richardson having here made a pause in his argument of a few moments to recover from his fatigue,

Mr Bradley said—I do not know that it is of any consequence, but in answer to this imaginary sketch of the counsel on the other side, I was merely refer to the fact that we gave them the following notice on the 26th of July last:

"You are also notified that at the hearing of said motion for a injunction the respondents will use said agreement between Judson and Chaffee, one bearing date September 5, 1850, and the other November 12, 1851."

Mr. Richardson—I do not know, since that matter presses so hard upon them, that it needs answer. I call it a change in their entire ground of defense, when, after having first assumed that the patent was not novel, denied its use, and put affidavits on file to that effect, they then come into Court and abandon that defense. I admit that at first they had an opportunity to give testimony, and they gave us notice they would use these papers also; but they did not tell us for what purpose. I do not think therefore what the gentleman said requires another answer.

The next point is, whether the contracts on their face amount either in law or in equity to any agreement which binds either Chaffee, or fixes the rights of the defendants. Were they, on their face alone, a lease or permission to these parties to use them? Now, Sir, these contracts have all the weakness to amount to that. There are just as many reasons why they don't amount to it, as there is why the recitals in the contracts do not amount to evidences of a license, or of another antecedent contract. But, Sir, they are not open to all the objections, because this is putting them, as I understand the gentleman to say, and as, in fact, they must be put, whether they put them so or not, and must so be examined by the Court, to see where the Court does find anything about which to contract—where there is a real contract between anybody. Now there is a contract here undoubtedly, and for the purpose of showing whether it gives any right to Hartshorn, it is necessary to see what rights it does give, to whom they are extended, and for what consideration. Here we are done with recitals, except for purposes of construction of the instrument itself, and for that we are still entitled to take recitals, but not by way of estoppel, or for the purpose of finding antecedent contracts. The recitals are only to be used now to see what the contract conveys, and to whom it conveys anything.

Now, Sir, I propose in the first place to show precisely what these contracts do convey as between Judson and Chaffee—whether they are revocable or not, and whether we have revoked them. I think I shall show your Honor that it is perfectly immaterial for the purposes of the case; but what right they had created may or may not be immaterial for the purposes of seeing whether they created licenses themselves by force of their own existence for Hamilton to work under this patent of Chaffee's.

Before, however, I come to that, I have a little use to make of that part of the case which was put in by Mr. Judson, which was so ably and eloquently presented by him that I do not feel disposed to say a word about it as a substantive ground of answer to these contracts, but merely by way of illustration. I am now looking to see what the contracts did convey and to whom they conveyed it. We have disposed of the matter of the recitals most conclusively. They are recitals about other matters and other contracts not made upon their face. Now I wish to go to the papers and examine them to discover who the parties are, their relation and condition, what they were talking about, and what sort of a contract they have made. That is very important upon this question. For that purpose, then, I say, the case shows that Wm. Judson was then the agent and attorney of Chaffee. For the purposes of the construction of these contracts, I propose to show that by virtue and by means of that attorneyship, he took a most rascally advantage of Chaffee in the making of them. I do not ask your honor to set aside, as Chancellor, an unconscionable contract. I propose merely to show that Wm. Judson procured, under peculiar circumstances, a contract to be made by Chaffee, which Chaffee in his distress and in his necessities made, which was entirely subversive of his rights—which took away all the rights he had by that extension, and which entirely destroyed his own interest, if that contract can be enforced. I propose to show that there was an attempt on the part of Judson to drive Chaffee for certain purposes, to make a —— contract; that Judson himself had drawn up this contract in a manner perfectly unconscionable, unfair, unjust, which was intended to benefit Judson alone and to ruin Chaffee, and that would be its effect, if the gentleman's construction is to be given to it. I take it you will not, as between attorney and client, give construction to a paper or strain a construction in a court of equity for the purpose of rendering a contract which puts Chaffee, the inventor, and the only meritorious man in this transaction, entirely in the hands of Judson, so that he can play the dog in the manger and neither let Chaffee take any advantage from the contract, nor take it for him. I say the contracts undertook to convey to Judson an irrevocable right to license the Goodyear combination, under certain conditions; and that commences and is closed between the fifteenth and twenty sixth lines of the second contract. Judson makes him undertake to convey or give him an irrevocable power to license the Goodyear combination on certain conditions during the whole extended term, without limiting him at all as to how much they should pay—only if they will pay a certain amount to him they are to receive a license. Turn if you please to the first contract. That contract undertakes to restrict Chaffee from licensing any body else but the Goodyear licensees.

"Now I do hereby in consideration of ... extended."

Then Judson undertook, as attorney, to get into his hands the power, first, upon certain conditions to license Goodyear and his licensees, and, second, to restrict Chaffee from licensing anybody else to conflict with them. Then he undertook to hold, or not, as he pleased, that patent without licensing Goodyear and his licensees, and letting nobody work under it, or to license them at his option under the terms and conditions of first contract. Now, what is the effect of that, if that is the construction, upon Chaffee? (and now I am addressing the Court entirely as a matter between Judson and Chaffee.) The effect upon Chaffee is this: Judson had merely to play the dog in the manger—to simply say—(because your Honor will remember the construction of this contract is to secure Judson for the advancement of money)—"Chaffee has acknowledged the "debt on the face of these instruments which, in a suit or "equity, can be maintained on evidence contained in them, "on Judson's part against him for this advancement." Judson holds over Chaffee a debt for the advancement, whatever it was. He says—"I can, if I please, let these "licensees go on without licensing them; that is, I can "hold your patent, and grant licenses to nobody and get no "pay. I can hold your patent to the end of the time. You "can license nobody else, I will not license the Goodyear "licensees. I will hold my debt on you, if I choose, till the "end of the seven years, and then if Chaffee is worth a "dollar in the world, he may collect it as he best may." That is their construction between these parties. The contracts were made between lawyer and client, and they are not to be sustained by a Court of Equity, as between the parties themselves.

I say then, Chaffee can revoke, upon the payment to Mr. Judson, of the advancement that the latter has made, as that is the only consideration where any interest is coupled in Judson, all the powers of attorney. Whether revocable or not they may be revoked at the will of the party. They are revocable in terms, if they are not coupled with an interest that stands in the way, or if our third party is to be injured, and if the attorneys or no one else has done anything under these which a revocation will injure. In other words, the moment the interests cease, if the parties can be placed in *statu quo*, if the parties can be put in the position they were before the power was granted, and no injury results from their revocation, the revocation can always be made. And I refer to the same authority, story on agencies, to which the gentleman referred. The doctrine there is, I agree that a power coupled with an interest cannot be revoked so long as that interest remains; or a power whether coupled with an interest or not, if acted under, so that a revocation would affect the acts that have been done under it by third parties, cannot be revoked at the will of the party. But if parties can be placed in the same position where they were before and the interest ceases, then it can be revoked.

Then this contract, as between Judson and Chaffee, can be revoked, because the only interest Judson had under it was the amount of money he advanced to Chaffee, and he was to hold these papers containing it, terms of the contract for security. It was a mortgage or lien upon the payment and he might hold it to secure himself for the money advanced. He might license under certain conditions Goodyear and his licensees, but without these conditions he could not. That is the amount of the paper, between Chaffee and Judson. It was giving to Judson in terms an irrevocable power of attorney to license the Goodyear licensees under certain conditions, to wit—that they should perform certain things before they could have a license. It was done for the purpose of securing Judson, and for no other earthly purpose. That was Judson's only interest.

There was one other object, but that does not meet this part of the case at all. That was, that Judson was to collect of the licensees the money for the licenses and if he did not be was to pay over to Chaffee the $1,500 a year. That is not such an interest as Justice Story talks about in his treatise on agency. If I take a power of attorney to sell a man's horse for him and pay over the purchase money, that is not a power coupled with an interest; but if I take a power of attorney to sell a man's horse for a certain sum and pay over the purchase money, the consideration I am to receive is an interest with which the power is coupled, and if he revokes my power that moment he forgives or annuls my liability to pay over the annuity.

Take out the interest that the debt created between Chaffee and Judson. Then Judson agrees to pay—I do not care whether upon his own or upon Chaffee's responsibility, I think both ways—$1,500 a year. That, upon revocation, ceases when Chaffee says to Judson, "You have "taken a power of attorney to hold my patent for certain "purposes. I now revoke that power." That very revocal absolves Judson forever from the payment of that annuity. Hence the annuity is not such an interest as, when coupled with a power of attorney, cannot be revoked. But a mortgage or security of a debt of Chaffee to Judson is an interest. It is a power coupled with an interest, and I acknowledge that as between Chaffee and Judson, until Chaffee, or Day in Chaffee's behalf refunds, or does what is equivalent to refunding, to Judson, the amount of Chaffee's debt to him, both for expenses and services, for they are both included in this grant. As a consideration of this contract, he has no power to revoke this power of attorney. But when he does refund to Judson this debt—when he has refunded to this attorney, who has taken this peculiar contract in his capacity as attorney, the amount of this debt, then his interest ceases; and, if you will look into Story on Agencies, you will find that when an interest ceases the power becomes revocable. It is precisely a mortgage—a power coupled with an interest irrevocable in its terms, and cannot be revoked until the interest ceases. And when Chaffee pays Judson, tell me, for purposes between him and Chaffee, why he could hold it. There was, I admit, as another part of the case, which I am coming to presently, the construction of the papers between these parties; but as between Chaffee and Judson, could not Chaffee revoke the power when he paid him the debt? We offer to show—and that was the nature of our offer—not to defeat a license, but to show that the power of attorney had been revoked before executed; that we had paid to Judson this interest; that we had said to him, "Here are your dollars "which you paid out for this extension; here is the amount "of your expenses and services as lawyer; that is the interest you have in Chaffee; take it and go away peace"ably, and leave us to enjoy our rights. You came in here "for what? For two purposes. One was to secure yourself; the other was to be our agent, our attorney to do "certain acts with certain persons if they would comply "with certain conditions. We took you as our attorney, "secured you in the patent. We gave you an irrevocable "power of attorney for that purpose. We gave you power "to do certain acts with Goodyear and his licensees. You "have not done these acts; they have not permitted you to "to do them. Now, take your money and go away in "peace, and we will hold our patent." That, in law and equity, we have a right to do. The very best equity we can get—and we do not need the equity of a visi prius lawyer, which he talks about—I do not know whether he referred to me or to Brother Jenckes—the broadest principles and fundamental rights of justice, the principles which govern between man and man, bestowed by the Creator, the principles of ordinary right and of Courts of Equity, give us this right. When Judson has not done any act under that power, so far as third parties are concerned, and when we say to him, "Here is all your "consideration—all you paid for the same, for which you "have a lien, or that protest, take it quietly, and go away," he is bound to go, and we have a right to our patent, to enjoy it for our own benefit. We have a right to claim for Chaffee his original rights under the patent. He has got them now for the first time, and it only remains for this Court to carry them out, and protect the party who has paid the debt. He has revoked this power to Judson, and has tendered him his money. He has received $11,000, as these papers show; for it was necessary to provide these affidavits. He has within two months pocketed $11,000 in cash for this invention. It is all he has ever received, and Day has paid it to him upon the advice of counsel; not in relation to these licenses, for nobody ever doubted upon that point; not whether an injunction could be got against Hartshorn, of Providence, for nobody ever doubted it; but as to Judson's power of attorney as between him and Chaffee. Day has seen fit to put the sum of money into this poor inventor's pocket and take the risk of it. That may be an important point between Judson and Chaffee, when this case comes to be litigated, and when it shall be, we are ready to meet the gentlemen upon it. We believe the law to be that when that interest is ended and that money is paid, we have a right to revoke and have thoroughly revoked that contract, and that Judson has no power to license now. He has not licensed up to the time when we bring this bill, or up to the time of that revocation, any of these parties. We are ready to meet the question whether we had revoked or could revoke that paper. When that comes it will be time to decide it. I have argued it now because we are driven to it. It was necessary for me to present my views in order to get rid of the underbrush in the case, because it has nothing to do with the issue, as I will show. It is only a power coupled with an interest, and when the interest ceases it can be revoked, and Judson is in the same position as before—in *statu quo*, as Justice Story says, certainly he has got his money for expenses and counsel fees, and nobody has been injured.

Then we come to the point whether this is an attorneyship, which I say exists here, which may not or may be revoked. It is immaterial whether it is or not. What power had he under this contract in relation to the Goodyear licensees.

Before, however, I come to that point I would remark that this first contract was carefully penned by Judson, and he took the great precaution not to become a party to it himself. They are famous on the other side of this case for making parties. But when they are making contracts they are cautious that nobody becomes a party but those on the other side. Judson did not covenant at all. The covenant was by Chaffee alone. Of course all the conditions in that contract are dependent or independent, and when your Honor looks at the law in this case, allow me to throw in a suggestion that that first contract is not signed by Judson; hence we have not the benefit of any direct covenant of Judson for our benefit in it. Then the only way the Court of Equity can ever give us any benefit of it is, to hold that every covenant is dependent, and none of them independent. If the contract had been signed by both, then we might have argued perhaps half an hour with the other side whether they were dependent or independent conveyances; but when Judson chooses not to sign the paper, I take it this court of equity will not undertake to hold that there is a covenant in it for Judson to perform—which is not dependent on the part of Chaffee, and which Chaffee is not bound to perform unless Judson performed his part of it.

[Here Mr. Bradly interrupted, and called for the production of the papers, which lead to inquiries by the court, and discussion from counsel on both sides, and Mr. Richardson proceeded.]

That brings me to the next point, to wit: That Judson was only authorized to license Hartshorn and these parties upon certain conditions. The inquiry is not whether these conditions have been performed, but whether licenses have been granted. I do not wish to play with logic to argue whether we must show that the conditions have not been performed, or they must show that they have. Mr. Judson was authorized to license upon certain conditions, defendant conditions, conditions precedent, I say. Whether they were or were not, no matter. I do not wish to make any words. When they show that Judson did license them they bring up the other question. When they show that they bring themselves within talking distance of the authorities which they introduce here—thus bring themselves up to the question of a Court's granting an injunction when he is in doubt about the license, as to whether the Court will make a condition of the injunction when they make a condition of performing the conditions. But we stop at the threshold and say, "We gave Judson the power to license "on certain conditions. Now you must prove that Judson "executed that condition before you can take advantage "of it. They say it may be done by parole or writing. "Show us that that has been done in any way. Convince "us of that. Show us where, when and how—by what "writing or contract you ever made a license to these "individuals. Is it in writing? produce it; is it verbal? "prove it. If you have not made it, you are out of the "pale of these authorities. There is no question of construction here, and the Court is not going to refuse a "plain, equitable right about the construction of a power of "attorney between us and whether it can be worked, which "has never been executed, and which they do not show has "been." And that is enough to address to a man of your Honor's experience—to say simply "We owned this patent "and you admit it." We say and you say that we authorized Judson to license you and others on certain conditions. You say that he did license us. Prove it. There is no proof in this case—none in fact. That is a complete and perfect answer to their whole defense.

But they attempt to go one step further, and say that is an equity created here on trust. But that stands entirely on the same position. It is arguing precisely in the same circle. It is exactly the same thing, and subject to the same exceptions. He contracted with Judson, and made Judson his attorney to do certain things for their benefit upon certain conditions. They were *cestui que trusts* upon certain conditions and took the rights he was to give to them through Judson. They were not parties to the original instrument, and not bound by it, and I ask you to begin at the commencement of this case and show where the Goodyear licensees have bound themselves by one act, contract, word or thing from beginning to end of this case. There is not a particle of testimony to show it either in the bill, affidavits or contracts themselves. They stand aloof. They contract for nothing, buy nothing, pay for nothing. Judson himself says they would not pay him. He got nothing. They stand here as common infringers, and when they are called to defend themselves, Judson steps in and says, "Now, get me as counsel to claim that I am a "party to the contract by original construction, and I will "catch at the floating straw—this equity on my behalf I "will seize upon it as a crowning man and see if "I cannot save myself by means of it, though I "know I never performed the contract." I have no doubt a man may be created a party to an instrument, but he must, in the first place, adopt it, and in the next place perform all its independent conditions to entitle him to its benefits and to set it up. Judson has never accepted it. Take this case and carefully look it over line by line, and find if you can, the thing that Goodyear and his license have done since August, 1850, to infringe the patent. Hartshorn is one of the parties, and what has he done? Follow him from August, 1850, to the present, and the first time we hear of his becoming a party to this trust is an attempt to set it up to shield him against absolute ruin—to prevent an injunction—to prevent him from stealing the use of our patent. That is the point where they claim to be trustees, and have the benefit that would accrue to them in a Court of Chancery as *cestui que trusts*, without performing the conditions and becoming a party to the contract. They say: "This Chaffee is poor; we will break down his firm by "suits and litigation; we will seize upon their goods as "they are going to Europe; we will riot in our living "through this extended term; we will never conform to "any of his conditions, and when he comes into Court we "will seize upon this trust to save us from the doom we "deserve." These are the parties who come here begging—men who have had fourteen years use of this patent for nothing, and who have swindled out of the patentee three years more. They now undertake to slide in side ways here, and say a trust was created for their benefit; call Judson their attorney at one end of their case and not at the other; say he was not Chaffee's attorney when the first contract was made, but Goodyear's; and when he came to the last, say he was not Goodyear's; and therefore he made a contract he had no right to make. They blew hot and cold for the purpose of escaping from their doom, and have about as many *defenses* as the lawyer had in the case of the potash kettle—first, his client never had it; second, it was broke when he took it; third, it was whole when he carried it home. That is precisely the nature of this defense. They seize upon a trust shadowed forth in these papers that may have been a good one had Judson made it so, and they seize upon a construction when they never did an act to bring them into it. Then they say, "We have laid still; we have pocketed your "money; we have paid nothing to Judson; we have "contracted with nobody under heaven; but you have "made a contract with Judson in N. Y. He is an Attorney or he is not, (and that is about the character of the man; he is anything that he is wanted to be.) We made a "contract with him and there is created a trust which might "have existed upon the performance of certain conditions; "we will seize upon that trust and save ourselves for the "remaining five years, and you may do without the "use or benefit of the patent all the time." This is precisely the position in which we stand in your court of equity. That is the case we come in with upon our pleadings, and that is the reason why we did not adopt the learned gentleman's suggestion to amend our bill, and amend ourselves out of your honor's court. That is the reason why, though we had not so much equity learning as the gentlemen on the other side, we knew enough to present the simple facts before the court, to wit: that we had the patent; these parties were wrongfully infringing, and they could get up no reason why! They talked a season but did not prove it. The burden is upon them. If it is upon us we take the whole case and say there is no reason. Tell me why Hartshorn is here as Goodyear's licensee? Tell me why Goodyear's licensees are here? It is only to be found in the papers by false construction. They never had a license. It is not avoiding a contract between these parties.

Then comes the case in the 7th of Vesey against their whole argument. The Court will not undertake to set aside a contract between parties licensed, and what its